



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 2, 1998

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR98-0566

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112819.

The City of Lubbock (the "city") received an open records request for particular engineering reports pertaining to "the results of the recent drilling and testing activities on and near our property located at 7506 Norfolk Avenue." You contend the requested information is excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code.

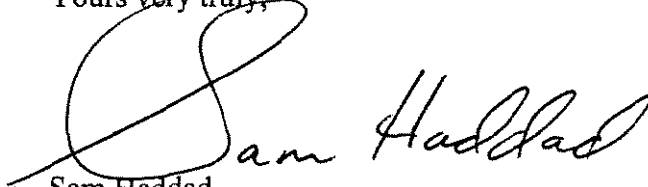
To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Open Records Decision No. 452 (1986) at 4 and authorities cited therein.

In Open Records Decision No. 638 (1996), this office determined how a governmental body must establish reasonably anticipated litigation when relying solely on a notice of claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or that party's attorney, and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. In this instance, you have made the representation that the notice of claim letters filed with the city comply with the requirements of the TTCA and with the city charter. We therefore conclude that you have met your burden of showing that litigation is reasonably anticipated and that the records at issue "relate" to the anticipated litigation. The city therefore may withhold the requested materials in their entirety pursuant to section 552.103, with the following caveat.

In concluding that the city may withhold the engineering reports, we assume that none of the records contained in the reports have previously been made available to the opposing parties in the anticipated litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large, stylized "S" at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/rho

Ref.: ID# 112819

Enclosures: Submitted documents

cc: Mr. R. Rex Aycock
7506 Norfolk Avenue
Lubbock, Texas 79423
(w/o enclosures)

¹Because we resolve your request under section 552.103, we need not address at this time the applicability of the other exceptions you raised.